ATTORNEY DOCKET NUMBER: 2002834-0222 (Bacterial Delivery DIV1)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:

Caplan, et al.

Examiner:

Not yet assigned

Serial No.:

Not yet assigned

Art Unit:

Not yet assigned

Filing Date:

December 4, 2003

Title:

MICROBIAL DELIVERY SYSTEM

CERTIFICATE OF MAILING

"Express Mail" mailing label number EV 170393647 US

Date of Deposit: December 4, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office to Address" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

KATHY HART GAGNON

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT

Pursuant to the duty of disclosure under 37 C.F.R. §§1.56, 1.97 and 1.98, Applicant requests consideration of this Information Disclosure Statement.

Type of Statement

The present Information Disclosure Statement is:

- [X] An *original* Information Disclosure Statement; or
- A supplemental Information Disclosure Statement.

Compliance with 37 C.F.R. §1.97

The present Information Disclosure Statement is being filed:

- [X] Pursuant to 37 C.F.R. §1.97(b); no fee or certification is required:
 - [X] Within three months of the filing date of a national application other than a continued prosecution application under §1.53(d);
 - [] Within three months of the date of entry of the national stage as set forth

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	[X]	Before	e the mailing of a first Office action on the merits; or
	[]	Before	e the mailing of a first Office action after the filing of a request for
		contin	ued examination under §1.114.
[]	Pursua	ant to 37	7 C.F.R. §1.97(c) after the dates listed above but before the mailing
	date of	f any of	a final action under §1.113, a notice of allowance under §1.311, or
	an acti	on that	otherwise closes prosecution in the application; Applicant hereby
	either:		
	[]	Certifi	ies that either:
		[]	Each item of information contained in the information disclosure
			statement was first cited in any communication from a foreign
			patent office in a counterpart foreign application not more than
			three months prior to the filing of the information disclosure
			statement; or
		[]	That no item of information contained in the information
			disclosure statement was cited in a communication from a foreign
			patent office in a counterpart foreign application, and, to the
			knowledge of the person signing the certification after making
			reasonable inquiry, no item of information contained in the
			information disclosure statement was known to any individual
			designated in §1.56(c) more than three months prior to the filing of the information disclosure statement; or
	[]	Includ	es herewith the fee set forth in §1.17(p).
[]	Pursua	nt to 37	7 C.F.R §1.97(d), after the mailing date of any of a final action
	under	§1.113,	a notice of allowance under §1.311, or an action that otherwise
	closes	prosecu	ation in the application; Applicant hereby both:
	[]	Certifi	es that either:

in §1.491 in an international application;

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- [] Each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or
- [] That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more than three months prior to the filing of the information disclosure statement; and
- [] Includes herewith the fee set forth in §1.17(p).

Content of the Information Disclosure Statement

Applicant hereby makes of record in the above-identified application the reference(s) listed on the attached form PTO-1449 (modified). The order of presentation of the references should not be construed as an indication of the importance of the references.

Applicant includes copies of references as indicated below:

[] A copy of each cited reference not indicated with an asterisk is included;

Atty. Docket No: 2002834-0222 Client Reference: ; Bacterial Delivery DIV 1)

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[X] Copies of references indicated with an asterisk on the attached form PTO-1449 are not included pursuant to 37 C.F.R. §1.98(d) because they were previously provided to the United States Patent Office in an Information Disclosure Statement that complies with 37 C.F.R. §1.98(a)-(c) and was submitted in the following patent application that is relied upon in the present case for an earlier effective filing date under 35 U.S.C. §120:

Serial Number	Filing Date	Status
09/731,375	December 6, 2000	Pending

[] Copies of English translations of one or more non-English references are included.

Applicant hereby makes the following additional information of record in the above-identified application:

Applicant certifies that the Information Disclosure Statement either:

]	Does not contain non-English language citations;

[] Does contain non-English language citations, of which the following is a concise explanation:

[]		Includes on	e or more	translations	of a	non-English	citation.
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Remarks

The submission of this Information Disclosure Statement should not be construed as a representation that a search has been made.

The submission of this Information Disclosure Statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b).

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Atty. Docket No: 2002834-0222

Client Reference: ; Bacterial Delivery DIV 1)

The submission of this Information Disclosure Statement shall not be construed as a representation that the information cited in the Statement is, or is considered to be, in fact, prior art as defined by 35 U.S.C. §102.

It is respectfully requested that:

- 1. The Examiner consider completely the cited information, along with any other information, in reaching a determination concerning the patentability of the present claims;
- 2. The enclosed form PTO-1449 be signed by the Examiner to evidence that the cited patent(s) and publication(s) has (have) been fully considered by the Patent and Trademark Office during the examination of this application; and
- 3. The citations for the patent(s) and publication(s) be printed on any patent which issues from this application.

Notwithstanding any statements by Applicants, the Examiner is urged to form his or her own conclusions regarding the relevance of the cited reference(s).

Respectfully submitted,

Charles Lyon Ph.D.

Agent for Applicant

Limited Recognition Under 37 CFR §10.9(b)

CHOATE, HALL & STEWART Exchange Place 53 State Street Boston, Massachusetts 02109 (617) 248-5000

Dated: December ______, 2003

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Form PTO-1449 U.S. Department of Commerce (REV. 8-83) Patent and Trademark Office 2002834-0222

INFORMATION DISCLOSURE STATEMENT Filing Date: Group: NYA

(Use several sheets if necessary)

Atty. Docket: In re Application No.: NYA

2002834-0222

Applicants: Caplan, et al.

Filing Date: Group: NYA

December 4, 2003

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	*4,171,299	Hamburger	October 16, 1979	260	112.5
	*4,338,297	Michael et al.	July 6, 1982	424	91
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	*4,579,840	Hahn et al.	April 1, 1986	514	14
	*4,659,678	Forrest et al.	April 21, 1987	436	512
	*4,696,915	Horecker	September 29, 1987		
	*4,816,449	Hahn et al.	March 28, 1989	514	17
	*4,849,337	Calenoff et al.	July 18, 1989	435	7
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	*5,169,933	Anderson et al.	December 8, 1992	531	391.3
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	*5,480,972	Avjioglu et al.	January 2, 1996	530	379
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·	*WO 95/34578	International	21 December 1995				
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